No. 20617

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

J. HOWARD ARNOLD APPELLANT

vs.

WILLIAM J. McGUINESS APPELLEE

FILED
12 1966
WM. B. LUCK, CLERK

PETITION FOR REHEARING

FILED
SEP 12 1966
WM. B. LUCK, CLERK

Appeal from the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

J. HOWARD ARNOLD
Postoffice Box 919
Berkeley 1, California
Telephone LA 4-8473

Appellant, pro se

No. 20617

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

J. HOWARD ARNOLD APPELLANT

vs.

WILLIAM J. McGUINESS APPELLEE

PETITION FOR REHEARING

Appeal from the
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

J. HOWARD ARNOLD
Postoffice Box 919
Berkeley 1, California
Telephone LA 4-8473

Appellant, pro se

e Honorable HARVEY M. JOHNSEN,
JAMES R. BROWNING,
BEN CUSHING DUNIWAY,
s of the United States Court of Appeals for the Ninth Circuit:

This Petition for Rehearing is respectfully presented to the Court's attention to certain controlling matters of fact and hich appear to have been overlooked in the course of rendering ecision of August 12, 1966, in this case.

I

rder affirming the District Court's dismissal under Rule 12(b)(6) ccompanied by no opinion of the Court stating its reasons for the ation, but simply stated that

> "After a careful consideration of the record and of the arguments made by and on behalf of the parties, we conclude that the judgment herein must be, and is hereby, affirmed."

se, the District Court order gave no reason for the dismissal, h, as Judge Koelsch has remarked, it should always do so.

Griffin v. Locke (1961) 286 Fed. 2nd 514 (CA, 9th)

ourt, in turn, should not neglect to state its reasons for affirm-, however briefly --especially where the District Court gave none, n clear basis for affirmation is to be found in Appellee's Brief. llant's opening and closing briefs showed plainly that the Superior t had never taken any jurisdiction of the contempt proceeding, in orm or of the subject-matter, making Appellee's decisions as a e wholly void and carrying no immunity from civil suit for damage. llee's Brief presented jurisdictional arguments entirely at variance etablished law, sought to show that Appellee had "some" jurisdic-

which conferred full judicial immunity for acts that were merely eous and not void, and attempted to rely on a wholly irrelevant diction *in rem* over property derived from a previous case. The has overlooked an opportunity -- and a duty -- to clarify the case ving specific reasons for its decision.

II

e of this Court to file a supplementary pleading concerning acts of lee subsequent to filing of the District Court action was requested ppellant, in his Opening Brief (p. 15), his Closing Brief (p. 17), and ral argument. Since filing of this damage suit clearly disqualified llee from taking any further part in Appellant's divorce case, no ion of his liability for damages from his acts in 1965 can exist. sole question before the Court is whether Appellant is to be permitted to include the later cause of action in the pending suit, or ed to file a new suit in District Court. Since justice requires that e to file a supplemental pleading be granted, it is presumed that aking its order this Court overlooked the matter of granting such e and will issue a further order.

III

is Court is well aware, its order of affirmation grants relief to ther judge, and for that reason alone should be accompanied by tailed opinion justifying the decision as a matter of law. The public ld not be left in a position to say, in criticism of this Court, as ate Justice Carter has said of the California Supreme Court,

'The majority of this court is apparently determined that no action for false arrest, false imprisonment, or malicious prosecution shall

lie against anyone connected with the enforcement of the law."

Coverston v. Davies (1952) 38 Cal. 2nd 315 at 324

"The majority holding in the present case affirming a judgment of dismissal following an order sustaining defendant's demurrer to plaintiff's complaint without leave to amend, adds another case to the growing list of those recently decided by this court which have arbitrarily deprived a plaintiff of his right to a trial on the merits. . . While it may be admitted that (false imprisonment) is a disfavored action, the policy should not be pressed further to the extreme of practical nullification of the tort, and the consequent defeat of the other important policy which underlies it, of protecting the individual from the injury caused by unjustified criminal prosecution. . The plaintiff here should have been permitted to prove, f he could, that defendant was not acting within the scope of his authority and therefore not entitled to the privilege of immunity. . . Plaintiff has, in effect, been denied his day in court as the result of this holding. . . surely the individual citizen is entitled to some protection and should be reimbursed or compensated for injury done o him without right and with malice."

White v. Towers (1951) 37 Cal. 2nd 727 at 734

ourt, in withholding its opinion, has overlooked an opportunity to e with a few words any possible public opinion that it is acting trarily in a manner that has no support in jurisdictional law, and ot justified because it could not be.

IV

ellant is doubly disadvantaged by opposing a judge and by appearing without counsel. Since the Court is composed of judges who are

embers of the bar looking with inherent disfavor on appearances ut counsel, it is doubly desirable that the order affirming dismiss- accompanied by detailed reasons in support of it, as a matter of ining public confidence in the fairness of judicial decisions. If an se decision were clearly justified by the facts and the law in this an opinion could be dispensed with; but such is not the situation. Court's reasons for affirmation are not apparent, and certainly are be found in Appellee's Brief; they should be stated explicitly.

V

absence of the Court's opinion, it must be presumed that the ents of Appellee were accepted as a proper basis for affirmation. ver, in this case Appellee's Brief is composed of bad law and in- ct suppositions throughout, and should not be dignified as accept- argument. The Brief's contentions that (1) Jurisdiction continues the main action into a contempt proceeding, (2) The quashing e, Sec. 416.1, Code of Civil Procedure, was improperly used by lant, (3) A judge's belief that he has jurisdiction is sufficient to full immunity, and (4) This Court may not consider any facts ie the record, even in connection with supplemental pleadings, are portable and cannot supply a basis for decision adverse to Appellant. peculations of Appellee's Brief that (A) Appellant "seeks to strip ameda County Superior Court of jurisdiction", (B) he ignores possible remedies in favor of a damage suit against a judge, he seeks to resist valid orders of the Superior Court, (D) he seeks ef from support payments, (E) he should have made a general arance instead of moving to quash the order to show cause, and he should have appeared for a hearing which could not legally be

are all erroneous and tend to cast aspersions upon Appellant
ifiably. Since Appellee's Brief cannot afford a creditable basis for
cision, the Court should supply its own authoritative opinion. The
interpretations of jurisdictional law and the quashing statute con-
in that Brief should not be endorsed, even by implication.

CONCLUSION

For the reasons above stated, Appellant believes a rehearing
be granted and the decision of this Court reversed; but, even if
cision is not reversed on rehearing, a detailed opinion should
e the order of affirmation, and leave to make a supplemental
g should be granted.

I certify that this Petition for Rehearing is presented in
aith, that it is not interposed for any purpose of delay, and that
judgment it is well founded and merits favorable consideration.

Respectfully submitted,

September 11, 1966.

J. Howard Arnold

Appellant